

NOT FOR PUBLICATION

SEP 15 2006

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MERLIN JOHN LITTLESUN,

Defendant - Appellant.

No. 05-30467

D.C. No. CR-04-00100-RFC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Submitted September 11, 2006 ^{**}

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Merlin John Little sun appeals from his jury-trial conviction for sexual abuse in violation of 18 U.S.C. § 2242(2). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, the Government's motion to submit this case on the briefs is moot.

Littlesun contends that the district court erred in denying his Fed. R. Crim. P. 29 motion because there was insufficient evidence to support his conviction.

Because Littlesun moved for judgment of acquittal at the close of the Government's case, but did not renew the motion at the close of all evidence, we review the district court's denial of motion for plain error. *See United States v. Alarcon-Simi*, 300 F.3d 1172, 1176 (9th Cir. 2002).

We conclude that Littlesun has not shown that the district court plainly erred in denying his motion. *See id.* Although the victim was unconscious and was unable to recall much of the incident, several eyewitnesses testified that they saw Littlesun on top of the victim, and that it appeared that he was having sex with the victim. Accordingly, we affirm.

AFFIRMED.